

Message Text

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ACTION AF-18

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FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC IMMEDIATE 8403

INFO AMEMBASSY BRUSSELS IMMEDIATE

AMEMBASSY KIGALI BY POUCH

CONFIDENTIAL KHARTOUM 1501

E.O. 11652: GDS

TAGS: PINS, SU

SUBJ: BSO TERRORIST TRIAL

REF: KHARTOUM 1495

1. SUMMARY. DETAILS VERDICT IN BSO CASE MAKE CLEAR
SUDANESE JUDICIAL PROCESS HAS BEEN EFFECTIVE DESPITE SPECIAL
PRESSURES IN CASE INVOLVING PALESTINIANS. END SUMMARY.

2. SUPERIOR COURT SESSION BEGAN ON SCHEDULE AT 10:00 AM
JUNE 24 BEFORE CROWD NEARLY 100 PEOPLE MOST OF WHOM
ADVOCATES, JUDGES AND LAW TRAINEES. COURT BEGAN BY ASKING
DEFENDANTS BY NAME TO STAND. CHIEF JUDGE ABDULLA ABU AGLA
READ SUMMARY OF WHAT HAD HAPPENED AND THEN DEALT WITH
DEFENSE ARGUMENTS (KHARTOUM 1416) AS FOLLOWS:

A. COMMON INTENTION WAS ESTABLISHED--PLAN WAS TO KEEP
HOSTAGES WHOSE "DESTINY WAS DEATH";

B. CONFESSIONS WERE ACCEPTABLE--DEFENDANTS HAD
BEEN FULLY WARNED OF RIGHTS AND CONSEQUENCES THIS
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VOLUNTARY ACT;

C. RE ARGUMENT THAT SOME OF DEFENDANTS MAY NOT HAVE PARTICIPATED IN ACTUAL SHOOTING, FIRST, THEY ALL EQUALLY RESPONSIBLE LEGALLY, AND SECOND, ALL CLAIMED IN CONFESSIONS TO HAVE PARTICIPATED:

D. RE SELF-DEFENSE, THIS ONLY APPLIED WHEN PERSON IN DANGER AND NONE OF DEFENDANTS HAD CLAIMED HOSTAGES IN ANYWAY THREATENED THEM. ARGUMENT OF SELF-DEFENSE "NOT A SHIELD FOR AGGRESSION".

3. JUDGE ABU AGLA THEN ANNOUNCED VERDICT OF GUILTY OF PREMEDITATED MURDER IN ACCORDANCE SUDAN CRIMINAL CODE ARTICLE 251. ACCUSED LIKEWISE GUILTY OF OTHER CHARGES CITED BY MAGISTERIAL INQUIRY (KHARTOUM 531) WITH EXCEPTIONS OF CRIMINAL INTIMIDATION (ARTICLE 441), USING FORGED DOCUMENTS (ARTICLE 140) AND VIOLATION OF PASSPORT AND VISA ORDINANCE ON WHICH THEY FOUND NOT GUILTY (FBIS REPORT ON THIS POINT THUS INCORRECT).

4. JUDGE THEN ASKED DEFENSE IF IT WISHED PRESENT WITNESSES AS TO CHARACTER OF DEFENDANTS. CHIEF DEFENSE COUNSEL AL-NASRI ASKED FOR TEN MINUTES WHICH GRANTED(AT THIS POINT SUDANESE SPECTATOR, APPARENTLY DERANGED, ROSE CLAIMING BE MEMBER BSO AND ASKED SPEAK. HE WAS ARRESTED AND TAKEN AWAY.) AFTER RECESS NASRI ADDRESSED COURT SAYING PALESTINIANS HAVE SACRIFICED MUCH AND DO NOT MIND GIVING EIGHT MORE LIVES. BUT HE CLAIMED THERE SHOULD BE DISTINCTION BETWEEN CRIMINAL AND POLITICAL OFFENSES AND CITED LEBANESE LAW AS EXAMPLE, ASSERTING IN LATTER CASE NEITHER DEATH NOR LIFE IMPRISONMENT WOULD BE IMPOSED. MOREOVER THROUGHOUT WORLD, INCLUDING THE US IN CASE SIRHAN AND IN ISRAEL ITSELF IN CASE JAPANESE RESPONSIBLE FOR LOD AIRPORT KILLINGS, COMMANDOS NEVER SENTENCED TO DEATH. PROSECUTOR THEN STATED THAT, AS DEFENDANTS FOREIGNERS, THERE NO RECORD OF ANY PREVIOUS OFFENSES. COURT AGAIN RECESSED FOR 30 MINUTES TO CONSIDER SENTENCE.

5. ON RECONVENING AT NOON, JUDGE ABU AGLA NOTED THAT ARTICLE 251 CARRIED WITH IT DEATH SENTENCE, BUT THAT CRIMINAL COURT CIRCULAR NO. 26 DID GIVE COV'T RIGHT TO IMPOSE LIFE IMPRISONMENT INSTEAD,IF CIRCUMSTANCES WARRANTED. COURT IN REACHING ITS CONFIDENTIAL

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DECISION HAD CONSIDERED: (A) FACT THAT DEFENDANTS HAD NOT INSISTED ON KILLING HOSTAGES, THEY HAD ALWAYS OFFERED ALTERNATIVE IF DEMANDS MET; (B) DEFENDANTS WERE MEN OF PRINCIPLE, MEMBERS OF ORGANIZATION ACTING UNDER ORDERS; (C) THEY DID NOT HAVE LUST FOR KILLING (APPARENTLY VARIATION ON POINTS A AND B); (D) THEY BELIEVED MEN KILLED BELONGED TO NATIONS WHICH PLAYED BIG ROLE IN FATE OF PALESTINIANS AND THAT THEY HAD RIGHT STRIKE AT THOSE NATIONS ANYWHERE; AND (E) DEFENDANTS WERE YOUNG MEN,

AGED 21 TO 27. THEREFORE, ACTING UNDER PROVISIONS CIRCULAR 26, COURT SENTENCED ALL EIGHT DEFENDANTS TO LESSER PENALTY OF LIFE IMPRISONMENT.

6. AT THIS POINT ALL DEFENDANTS, JOINED BY SMALL NUMBER OF PALESTINIAN STUDENTS IN COURT AND, FOR FIRST TIME SINCE COURT PROCEEDINGS BEGAN, BY THREE OR FOUR SUDANESE SPECTATORS, STARTED SHOUT SLOGANS "LONG LIVE BSO, DOWN, DOWN USA, ETERNITY AND GLORY FOR PALESTINIAN REVOLUTION, ETC.". POLICE RESTORED ORDER AND DEFENDANTS WERE THEN LED AWAY.

7. ATMOSPHERE: COURT SECURITY EXTREMELY TIGHT THROUGHOUT, WITH STREET BLOCKED OFF FROM 5. A.M., NO PARKING PERMITTED IN AREA, EXTRA POLICE, ALL SPECTATORS SEARCHED. FOR FIRST TIME IN SUPERIOR COURT SESSIONS, PLO REP ABU KHEIR APPEARED. EMBASSY OBSERVERS NOTED THAT JUDGE ABU AGLA'S PRESENTATION WAS ELOQUENT AND EFFECTIVE.

8. COMMENT: AS EMBASSY ATTORNEY OPINED (KHARTOUM 1444), SENTENCE OF LIFE MAY NOT BE STRICTLY IN ACCORD WITH TERMS OF CRIMINAL COURT CIRCULAR AND ESTABLISHMENT PRECEDENT IN APPLYING IT. THIS HARDLY NORMAL CASE, HOWEVER, YAFD CHIEF PROSECUTOR (KHARTOUM 1444) DID CITE REASON WHY IT MIGHT BE BEST TAKE ALTERNATIVE REGARDLESS LEGAL DISTINCTIONS. SINCE DEATH SENTENCE WOULD HARDLY HAVE BEEN CARRIED OUT IN ANY CASE, SENTENCES APPEAR CLEARLY MAXIMUM WHICH COULD HAVE BEEN EXPECTED. SUCH A CONVICTION IN AN ARAB COURT IN FACT SEEMS MAJOR ACHIEVEMENT. (EMBASSY ATTORNEY WHO IN DAMASCUS LAST WEEK FOR MEETING ARAB PARLIAMENTARIANS TOLD EMOFF THAT PALESTINIANS THERE BERATED SUDANESE DELEGATION MEMBERS FOR SUDAN ESTABLISHING PRECEDENT THAT ACTIONS SUCH AS KHARTOUM ASSASSINATIONS WERE CRIMINAL OFFENSE.) PRECISE OUTCOME UNPUBLICIZED REVIEW PROCESS BY HIGH COURT, WHICH WE UNDERSTAND ALREADY INITIATED

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IS UNCERTAIN. HOWEVER, EMBASSY LAWYER NOW STATES NORMAL PROCEDURE WOULD NOT REQUIRE HIGH COURT TO REFER CASE TO NIMEIRI, SINCE DEATH PENALTY NOT INVOLVED. NIMEIRI COULD, HOWEVER, REQUEST FILE OR SIMPLY EXERCISE A DEGREE OF EXECUTIVE CLEMENCY, INCLUDING PARDON. HOPEFULLY NIMEIRI WILL ESTABLISH FURTHER UNPALATABLE PRECEDENT BY MAKING THOSE CONVICTED SERVE AT LEAST APPROPRIATE PORTIONS THEIR SENTENCES.

9. NEXT STEPS; THERE IS NO REQUIREMENT UNDER SUDANESE JUDICIAL PROCEDURE FOR ANY FURTHER PUBLIC ANNOUNCEMENT IN THIS CASE, OR FOR REFERRAL CASE TO PRESIDENT. HOWEVER, NIMEIRI WILL BE RESPONSIBLE FOR EVENTUAL OUTCOME, IF ONLY BY HIS INACTION. GOS, OF COURSE, ALWAYS FREE ANNOUNCE HIGH COURT DECISION IN PRESS, BUT THERE IS NO REQUIREMENT TO DO SO. WE SHALL, HOWEVER, CONTINUE USE VARIETY OF SOURCES KEEP CLOSE TRACK

OF CASE. AS POINT OF INTEREST, EMBASSY ATTORNEY TOLD US SOMETIME AGO THAT UNDER SUDANESE LAW, LIFE IMPRISONMENT ACTUALLY MEANS 20 YEARS WITH POSSIBILITY OF FOUR YEARS OFF FOR GOOD BEHAVIOR. SUDAN ALSO HAS PRACTICE OF GRANTING PARDONS PERIODICALLY-USUALLY ON INDEPENDENCE DAY--TO DESERVING PRISONERS. THESE POINTS COULD CARRY WEIGHT IN NIMEIRI'S DECISION LET JUDGMENT STAND OR INVOKE EXECUTIVE CLEMENCY.

10. FOR BRUSSELS. WE HAVE BRIEFED NEW BELGIAN CHARGE SAIES RE FOREGOING. HE RECOMMENDING TO BRUSSELS THAT CASE BE DISCUSSED DURING FORTHCOMING VISIT THERE GOS FONMIN KHALID.

BREWER

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